

# **Advisory Opinion**

## **16-01-LOB, Terry Rasmuson**

Presented by:  
Heather Dalberg  
Paralegal I

**[02]**

## **ADVISORY OPINION REQUEST**

**Number:** AO 16-01-LOB  
**Requested By:** Deborah M. Bitney  
**Prepared By:** Heather L. Dalberg, Paralegal I, Juneau APOC Office  
**Date Issued:** February 16, 2016  
**Subject:** “In-Support of Lobbying” Activity Allowable to Registered Lobbyist Acting As Contractor

**NOTE:** A change was requested by Deborah M. Bitney to the originally issued Advisory Opinion. This document contains the change. The original version made reference to two lobbyists acting as contractors for Rasmuson Foundation. This was a correct fact, however the Foundation was only concerned with one contractor in their proposed question. The document has been updated to reflect the single contractor. This correction did not change the opinion in any way.

## **QUESTION PRESENTED**

Rasmuson Foundation has hired a contractor who is a registered lobbyist for other entities. What “in-support of lobbying” activities can this contractor engage in on behalf of Rasmuson Foundation?

## **SHORT ANSWER**

The contractor may engage in the actions listed in the regulation 2 AAC 50.575(b)(2). In addition, the contractor should avoid all direct communication with legislative or administrative contacts.

## **FACTS**

- Rasmuson Foundation hired a lobbyist who is registered with other employers as a contractor with a “non-lobbying” contract<sup>1</sup>.
- Rasmuson Foundation would like their contractor to provide “in-support of lobbying” activity on behalf of their organization.

## **ANALYSIS**

Rasmuson Foundation’s contractor is a “registered lobbyist” for other employers and, therefore, cannot influence legislative or administrative action on behalf of Rasmuson Foundation without registering

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<sup>1</sup> The lobbyist is registered with Gillespie and Associates and Alaska Network on Domestic Violence & Sexual Assault.

them as a client<sup>2</sup>. The person contracted with Rasmuson Foundation is referred to as “the registered lobbyist” in the remainder of this document.

As a hired contractor with non-lobbying contracts, the registered lobbyist may provide services that are defined as “in-support of lobbying” for Rasmuson Foundation. Per the Commission’s lobbying regulations, these services include research, drafting, preparation, or adaptation of documents for use by the lobbyist (or organization, in this matter) for the purpose of influencing legislative or administrative action<sup>3</sup>. The registered lobbyist, as a hired contractor, may offer advice to Rasmuson Foundation.

The registered lobbyist should avoid all communication with legislative or administrative contacts on behalf of Rasmuson Foundation<sup>4</sup>. This includes any emails sent and signed by the registered lobbyist. His name should not be included in the signature, as a CC, or as a BCC on these emails. The registered lobbyist may draft emails, but those emails must be sent and signed by a company employee since the Rasmuson Foundation has no lobbyist as of the date of this document. The registered lobbyist should not make phone calls on behalf of the Rasmuson Foundation, even to set up a meeting, as this can be construed as lobbying since it falls within the definition of “direct communication”. The registered lobbyist should not testify on behalf of Rasmuson Foundation or participate in any meetings the Rasmuson Foundation might attend as this also falls within the definition of “direct communication”.

By statute a lobbyist is a person who is paid to communicate directly with any public official for the purpose of influencing legislation or administrative action. Also by statute, to “communicate directly” means to speak or communicate with a legislator, legislative employee or public official. It is difficult to imagine that a lobbyist could engage in the “scheduling services” envisioned by the Rasmuson Foundation without directly communicating with legislators or legislative employees.

## **CONCLUSION**

A registered lobbyist may not engage in lobbying activity for an entity in which they are not registered as a lobbyist. They may provide “in-support of lobbying” services as long as they avoid direct communication with legislative and administrative contacts.

## **COMMISSION DECISION**

Only the Commission has the authority to approve an advisory opinion. 2 AAC 50.905. The Commission will rule on staff’s proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff’s proposed

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<sup>2</sup> AS 24.45.171(11)(A)-(B)

<sup>3</sup> 2 AAC 50.575(b)(2)

<sup>4</sup> AS 24.45.171(4)

advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 465-4864.

## **LAW**

### **AS 24.45.171 Definitions**

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by any state agency of any rule or regulation, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act); "administrative action" does not include

(A) a proceeding or an action to determine the rights or duties of a person under existing statutes, regulations, or policies;

(B) the issuance, amendment, or revocation of a permit, license, or entitlement for use under existing statutes, regulations, or policies by the agency authorized to issue, amend, or revoke the permit, license, or entitlement for use;

(C) the enforcement of compliance with existing law or the imposition of sanctions for a violation of existing law;

(D) procurement activity, including the purchase or sale of property, goods, or services by the agency or the award of a grant contract;

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(4) "communicate directly" means to speak with a legislator, legislative employee, or public official

(A) by telephone;

(B) by two-way electronic communication; or

(C) in person;

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(9) "influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action;

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(11) "lobbyist" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

**2 AAC 50.575 Reporting by employer of lobbyist**

(b)(2) the direct costs and expenses incurred by the employer in research, and in the drafting, preparation, or adaptation of documents for use by the lobbyist for the purpose of influencing legislative or administrative action;

## **Dalberg, Heather L (DOA)**

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**From:** Debbie Bitney <dbitney@rasmuson.org>  
**Sent:** Wednesday, February 10, 2016 3:10 PM  
**To:** Dalberg, Heather L (DOA)  
**Cc:** Diane Kaplan; Aleesha Towns-Bain; Cassandra Stalzer; Sammye Pokryfki  
**Subject:** Request for Advisory Opinion

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Ms. Dahlberg,

Rasmuson Foundation seeks written clarification from the Commission regarding activities that qualify as “in support of lobbying” vs. direct lobbying. Specifically, the Foundation wants to confirm which activities a contractor, who is a registered lobbyist, may provide in support of lobbying on our behalf in regards to scheduling meetings with legislators and administration officials. It is our understanding that AS 24.45 allows for an individual with a non-lobbying monitoring contract with the Foundation but is a registered lobbyist for other clients, to schedule appointments, prepare reports, draft talking points and presentations, and walk through the halls of the State Capitol with Foundation staff and board members, so long as the contractor and the Foundation both keep records of the time spent in support of lobbying.

The Foundation seeks written clarification that “in support of lobbying” as outlined above for a registered lobbyist who has a non-lobbying contact with the Foundation, allows for scheduling activities that do not qualify as direct lobbying, telephone calls, face-to-face, email and/or text conversations with legislators, public officials, legislative aides and committee staff about timing and content of legislative hearings and questions regarding who may be scheduled to testify during committee hearings.

Further, the Foundation seeks clarification that a contractor who is a registered lobbyist may provide the scheduling services described above so long as that contractor is not a paid lobbyist for the Foundation.

In short, we request written guidance from the Commission that affirms, expands, or narrows our understanding of allowable “in support of lobbying” scheduling activities so long as the contractor avoids direct communication with legislators, staff or public officials expressing an opinion for or against any named legislation or administrative action.

Thank you,

Deborah M. Bitney  
Vice President – Chief Administrative Officer  
(907) 334-0506



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

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[www.doa.alaska.gov/apoc](http://www.doa.alaska.gov/apoc)

February 16, 2016

VIA U.S. MAIL and EMAIL

Deborah M. Bitney, Vice President  
Rasmuson Foundation  
301 W Northern Lights Blvd #601  
Anchorage, AK 99503  
[dbitney@rasmuson.org](mailto:dbitney@rasmuson.org)

Re: Advisory Opinion Request AO 16-01-LOB

Dear Ms. Bitney:

Please find the attached advisory opinion regarding your February 10, 2016 (received on February 11, 2016) request for guidance related to the application of lobbying laws to a registered lobbyist hired as a contractor for Rasmuson Foundation with a non-lobbying contract and what "in-support of lobbying" activities he or she may conduct on behalf of the company.

The conclusion of this opinion has not yet been submitted for approval by the Alaska Public Offices Commission. AS 15.13.374. Only the Commission has the authority to approve an advisory opinion under 2AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

A handwritten signature in black ink, appearing to read "Heather L. Dalberg".

Heather L. Dalberg  
Paralegal I

CC: Paul Dauphinais, Executive Director  
APOC Commission Members  
John Ptacin, Assistant Attorney General  
Senior Staff

Encl: Unapproved Advisory Opinion AO





THE STATE  
of **ALASKA**  
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Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

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[www.doa.alaska.gov/apoc](http://www.doa.alaska.gov/apoc)

May 19, 2016

VIA EMAIL & CERTIFIED MAIL

Deborah Bitney  
Rasmuson Foundation  
301 W Northern Lights Blvd #601  
Anchorage, AK 99503  
[dbitney@rasmuson.org](mailto:dbitney@rasmuson.org)

RE: COMMISSION MEETING NOTICE

Dear Ms. Bitney:

At its June 8, 2016 Commission Meeting in Anchorage, the Commission will review the matter of your advisory opinion request.

You have the right to participate at the meeting either in person or by telephone (1-800-315-6338, code 4176 #1). If you decide to participate please let APOC staff know that you will be doing so and whether your participation will be in person or via telephone. The Commission is expected to review your Advisory Opinion at approximately 9:10 AM on June 8, 2016.

If you have any questions please feel free to call APOC staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather L. Dalberg".

Heather L. Dalberg  
Paralegal I

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Deborah Bitney

June Meeting Notice

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PS Form 3800, August 2006

See Reverse for Instructions

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